

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LESLY POMPY and INTERVENTIONAL
PAIN MANAGEMENT ASSOCIATES, P.C.,

Plaintiffs,
v.

Case Number 19-10334
Honorable David M. Lawson

MONROE BANK AND TRUST,
SUSAN MEHREGAN, THOMAS SCOTT,
TINA TODD, JESSICA CHAFFIN,
JACK VITALE, MARC MOORE,
ROBERT BLAIR, JON LASOTTA,
SHAWN KOTCH, BRIAN BISHOP,
BLUE CROSS BLUE SHIELD OF MICHIGAN,
BLUE CROSS BLUE SHIELD OF MICHIGAN
MUTUAL INSURANCE COMPANY,
BLUE CROSS COMPLETE OF MICHIGAN,
BLUE CROSS COMPLETE OF MICHIGAN, LLC,
MICHAEL ZSENYUK, JIM GALLAGHER,
BRIAN ZASADNY, JAMES HOWELL,
DIANE SILAS, CARL CHRISTENSEN,
J. ALAN ROBERTSON, M.D., SHELLY
EDGERTON, SEAN M. SIEBIGTEROTH,
KIM GADEKE, VAUGHN HAFNER,
DINA YOUNG, and RAY KISONAS,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING IN PART
MOTION TO DISMISS FOR IMPROPER PLEADING, GRANTING MOTIONS TO
DISMISS CLAIMS AGAINST CERTAIN DEFENDANTS, DISMISSING OTHER
MOTIONS AS MOOT, DENYING MOTION TO STRIKE AMENDED COMPLAINT,
AND CONTINUING THE ORDER OF REFERENCE**

Presently before the Court is the report issued on January 17, 2020 by Magistrate Judge Michael J. Hluchaniuk under 28 U.S.C. § 636(b) recommending that the Court grant in part several motions to dismiss the complaint for failure to satisfy the concise pleading requirements of Federal Rule of Civil Procedure 8, dismiss certain other claims against some defendants, allow the plaintiff

an opportunity to file a proper amended pleading, and dismiss as moot a motion by other defendants challenging the merits of the originally pleaded claims.

Although the magistrate judge's report stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, no objections have been filed. The plaintiff filed a "reply" to the report and recommendation, which did not raise any objections, but instead represented that the plaintiff accepted the magistrate judge's conclusions and intended to file an appropriately winnowed pleading. On the same date, he filed a drastically shorter amended complaint, which reframed his claims using approximately 20 pages, compared with the nearly 200-page original complaint. None of the defendants objected to the recommendations by the magistrate judge.

The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge. The Court therefore will adopt the magistrate judge's recommendations, deem the plaintiff's amended pleading as properly filed, and deny as moot the remaining challenges to the original pleading.

The Court also notes that, after the amended pleading was filed, the Blue Cross defendants filed a motion to strike the amended pleading, on the sole ground that it was filed without leave granted by the Court. Although there may be some pedantic virtue in that argument because the recommendation of the magistrate judge had at that time not yet been adopted by the undersigned, the Court finds that no purpose would be served by striking the amended pleading and that the just, speedy, and inexpensive resolution of the matter would best be encouraged by allowing the

plaintiff's nominally premature but otherwise permissible filing to stand. *See* Fed. R. Civ. P. 1. Moreover, the Court finds that the Blue Cross defendants waived their procedural challenge to the filing of the amended pleading by failing to present any timely objection to the magistrate's recommendation that the amendment should be permitted. The Blue Cross defendants' motion to strike therefore will be denied.

Accordingly, it is **ORDERED** that the amended report and recommendation (ECF No. 64) is **ADOPTED**, and the defendants' motions to dismiss (ECF No. 28, 37, 46) are **GRANTED IN PART**. The original complaint is **DISMISSED WITHOUT PREJUDICE**, and the plaintiff's amended complaint docketed on January 28, 2020 is deemed properly filed. The defendants' motions are **DENIED** in all other respects.

It is further **ORDERED** that the MBT defendants' motion to dismiss (ECF No. 20) is **GRANTED**, and the plaintiff's state law claims against those defendants under Michigan Compiled Laws § 487.691 **ONLY** are **DISMISSED WITH PREJUDICE**. The re-pleading of other claims against the MBT defendants in the amended complaint is **ALLOWED**.

It is further **ORDERED** that defendant Ray Kisonas's motion to dismiss for insufficient service of process (ECF No. 37) is **GRANTED**, and all of the plaintiff's claims against defendant Kisonas are **DISMISSED WITHOUT PREJUDICE**.

It is further **ORDERED** that the Blue Cross defendants' motion to dismiss (ECF No. 35) is **DENIED** as moot, and their motion to strike (ECF No. 70) is **DENIED** for lack of merit in the grounds presented.

It is further **ORDERED** that the referral of the case to the assigned magistrate judge under the previously issued order of reference is **CONTINUED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: March 30, 2020

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on March 30, 2020.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI